



Contact: Robert Corrales  
Tel: (609) 292-0306  
Fax: (609) 777-3634  
State of New Jersey  
Department of Labor and  
Workforce Development  
PO Box 110  
Trenton, New Jersey  
08625-0110

---

RE: *Proposed New Rules: N.J.A.C. 12:122*  
*Cutting and Grinding of Masonry*

Attached please find the above-referenced matter which was published in the Monday, December 19, 2005 *New Jersey Register*.

If you have any questions, please contact David Fish, Regulatory Officer at 609-292-2789.

# **LABOR AND WORKFORCE DEVELOPMENT**

**(a)**

## **PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH**

### **Cutting and Grinding of Masonry**

#### **Proposed New Rules: N.J.A.C. 12:122**

Authorized By: A.J. Sabath, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1A-3, 34:5-169 and 34:5-182.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-467.

A public hearing on the proposed new rules will be held on the following date at the following location:

**NEW JERSEY REGISTER, MONDAY, DECEMBER 19, 2005**

**(CITE 37 N.J.R. 4871)**

Monday, January 9, 2006  
 10:00 A.M. to 12:00 Noon  
 New Jersey Department of Labor and Workforce Development  
 John Fitch Plaza  
 13th Floor Auditorium  
 Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by February 17, 2006 to:

David Fish, Regulatory Officer  
 Office of Legal and Regulatory Services  
 PO Box 110, 13th Floor  
 Trenton, New Jersey 08625-0110  
 Fax: (609) 292-8246

If you need this document in Braille, large print or audio cassette, please contact the Office of Marketing at (609) 292-7832 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

#### Summary

The Department is proposing new rules at N.J.A.C. 12:122 in order to implement P.L. 2004, c.172, §1, N.J.S.A. 34:5-182, which regulates the cutting and grinding of masonry so as to protect the health and safety of employees against the effects of silicosis and other respiratory diseases which may result from the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws and the dry grinding of masonry materials.

A summary of the proposed new subchapters follows:

N.J.A.C. 12:122-1 would set forth general provisions which apply to Chapter 122, including the purpose and scope of the chapter, and the definitions of terms used throughout the chapter. At proposed N.J.A.C. 12:122-1.3, within the definition of the term "complete respiratory program," the Department proposes to incorporate by reference the definition of the term "respiratory protection program," as contained within 29 CFR §1910.134. The Federal respiratory protection standard at 29 CFR §1910.134 requires, among other things, that employers develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use.

N.J.A.C. 12:122-2 would address employer responsibilities relative to the protection of their employees against the effects of silicosis and other respiratory diseases when engaged in the cutting and grinding of masonry. The employer responsibilities listed within the proposed subchapter are taken verbatim from N.J.S.A. 34:5-182. Specifically, N.J.A.C. 12:122-2.1 would state that employers shall not engage in the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws or the dry grinding of masonry materials, unless the employer has first determined in a manner consistent with 29 U.S.C. §651 et seq. (the Federal Occupational Safety and Health Act of 1970), that the use of water in the cutting or grinding is not feasible. N.J.A.C. 12:122-2.1 would indicate, further, that where the employer has determined that the use of water in the cutting or grinding is not feasible, the employer would be permitted to engage in the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws or the dry grinding of masonry materials, only where the employer meets all of the following requirements: (1) the employer shall use engineering and work practice controls to control the dust, such as a vacuum with a high efficiency particulate air (HEPA) filter, or other dust control systems; (2) any dry cutting which occurs shall be done in a designated area away from craftworkers, if possible; and (3) the employer shall provide workers with full face respirators as part of a complete respiratory program, which shall include training, the proper selection of respiratory cartridges and fit-testing in order to ensure that the workers are able to wear the respirators.

With regard to that portion of the third requirement listed above which states that employers must provide workers with "fit-testing in order to ensure that the workers are able to wear the respirators," the Department does not mean to indicate that one can discern from fit-testing alone that an individual is able to wear a respirator. Fit-testing only indicates that the respirator fits properly on the individual's face in such a manner as not to interfere with the operation of the equipment. In addition to fit-

testing, 29 CFR §1910.134(e) addresses the medical evaluation requirement, which is part of the Federal respiratory protection standard (29 CFR §1910.134). As reflected within proposed N.J.A.C. 12:122-1.3, which states that "complete respiratory program" would mean a "respiratory protection program" as that term is defined within 29 CFR §1910.134, the Department intends that employers be required to use fit-testing as part of a complete respiratory program, which shall also include the performance of medical evaluations, as required under the Federal respiratory protection standard (29 CFR §1910.134).

N.J.A.C. 12:122-3 would address the Department's right to enter and inspect the establishment or field site of any employer where work is performed by an employee if there is reason to believe that a violation of N.J.A.C. 12:122 has occurred or is occurring. The subchapter would also set forth the Commissioner's right to issue orders to cease against those employers who are found to have violated N.J.A.C. 12:122. Finally, the subchapter would set forth the procedure to be followed when the Commissioner's order to cease is not obeyed.

The authority of the Department to (1) enter and inspect the premises of employers where there is reason to believe that a violation of N.J.A.C. 12:122 has occurred or is occurring, (2) conduct whatever investigation is necessary to carry out the provisions of N.J.A.C. 12:122, and (3) order violations of N.J.A.C. 12:122 to cease, derives from the entry, inspection and order to cease provisions of the Construction Safety Act, N.J.S.A. 34:5-166, et seq., of which N.J.S.A. 34:5-182 is a part. Specifically, N.J.S.A. 34:5-170 provides that the Commissioner shall have the power and authority, "to examine and inspect any part of any project or facility included within N.J.S.A. 34:5-168 and to make such investigation as is reasonably necessary to carry out the provisions of N.J.S.A. 34:5-166, et seq." N.J.S.A. 34:5-170 also states that if upon inspection the Commissioner discovers a condition which exists in violation of the provisions of the Construction Safety Act, he or she "shall be authorized to order such violation to cease and to take such steps necessary to enforce such an order."

N.J.A.C. 12:122-4 would address the levying of penalties by the Department for violations of N.J.A.C. 12:122 and would set forth the procedures to be followed when an alleged violator requests a formal hearing with regard to the imposition of a penalty. Specifically, N.J.A.C. 12:122-4.1 would indicate that a violation of any of the provisions of N.J.A.C. 12:122 shall be punishable by a monetary penalty of up to \$500.00. It would also state that (1) if a violation is of a continuing nature, each day during which the violation continues shall constitute an additional and distinct offense, (2) penalties imposed may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under the Penalty Enforcement Law, N.J.S.A. 2A:58-1, et seq., and (3) the Commissioner may compromise and settle any claim for penalties in such amount as the Commissioner may deem appropriate and equitable under all of the circumstances. Each of these provisions of proposed N.J.A.C. 12:122-4.1 are consistent with N.J.S.A. 34:5-178, Violations; Penalties; Compromise of Claims, within the Construction Safety Act.

Specifically regarding the issue of compromise and settlement of any claim for penalties, N.J.S.A. 34:5-178 states that the Commissioner is authorized and empowered to compromise and settle any claim for penalty in such amount in the discretion of the Commissioner as may appear appropriate and equitable under all of the circumstances. In addition to mirroring this statutory language, proposed N.J.A.C. 12:122-4.1(d) includes a list of factors to be considered by the Commissioner when assessing whether to compromise and settle a claim for penalty. That list includes (1) the past record of compliance with the provisions of N.J.A.C. 12:122 by the person cited, (2) the degree of cooperation afforded to the Commissioner's representative by the person cited in securing compliance with N.J.A.C. 12:122, (3) whether the violation was willful in nature, and (4) whether the violation resulted in injury or bodily harm. This list of factors is virtually identical to the list of factors considered by the Commissioner when assessing whether to compromise and settle claims for penalty under N.J.A.C. 12:121, a similar chapter which pertains to the licensing of crane operators. It is the Department's objective in adopting for use within N.J.A.C. 12:122 the factors set forth at N.J.A.C. 12:121 to achieve consistency in the standard applied when

determining whether to compromise and settle a claim for penalty within the same Department program area.

Proposed N.J.A.C. 12:122-4.2, which addresses requests for hearing by those who are assessed a penalty under N.J.A.C. 12:122-4.1, is also modeled on the rules pertaining to the licensing of crane operators; specifically, N.J.A.C. 12:121-8. Proposed N.J.A.C. 12:122-4.2(a) states that no penalty shall be levied under N.J.A.C. 12:122-4.1 unless the alleged violator is provided with (1) notification of the violation, (2) notification of the amount of the penalty to be imposed, and (3) an opportunity to request a formal hearing. Proposed N.J.A.C. 12:122-4.2(b) through (h) set forth the procedures to be followed when an alleged violator requests a formal hearing. The Construction Safety Act, of which N.J.S.A. 34:5-182 is a part, does not expressly require that those assessed penalties under the act must receive a hearing; however, the Department believes that providing such hearing rights is essential to safeguarding the regulated community's right to due process.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed new rules at N.J.A.C. 12:122 would have a positive social impact in that they would combine the substantive protections contained within N.J.S.A. 34:5-182 with an appropriate enforcement mechanism taken from N.J.S.A. 34:5-166, et seq., of which N.J.S.A. 34:5-182 is a part, thereby providing the Department with the tools necessary to effectively protect employees against the effects of silicosis and other respiratory diseases which may result from the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws and the dry grinding of masonry materials.

#### Economic Impact

The proposed new rules would increase the cost of doing business for those engaged in the cutting or grinding of masonry. Specifically, such employers would be required to obtain equipment which uses water in the cutting or grinding or, in the alternative, where it has been determined that the use of water in the cutting or grinding is not feasible, they would be required whenever engaged in the dry cutting or grinding of masonry to do all of the following: (1) control the dust resulting from dry cutting or grinding through the use of engineering and work practice controls such as the use of a vacuum with a HEPA filter, (2) ensure that dry cutting occurs in a designated area away from craftworkers, if possible, and (3) provide workers with full face respirators as part of a complete respiratory program, as that term is defined within proposed N.J.A.C. 12:122-1.3. Thus, under the proposed new rules, in every instance when an employer is engaged in the dry cutting or grinding of masonry, that employer would be required to incur whatever costs are associated with the acquisition and installation of engineering and work practice controls, in addition to obtaining full face respirators for all affected workers and instituting a complete respiratory program, which includes training, the proper selection of respiratory cartridges and fit-testing.

The proposed new rules would also provide for the Department to impose a monetary penalty of up to \$500.00 for each violation of the chapter, with each day during which a violation of a continuing nature continues constituting an additional and distinct offense.

#### Federal Standards Analysis

29 CFR §1910.1000(a) through (d) sets limits as to the acceptable amounts and concentrations of air contaminants within the workplace. 29 CFR §1910.1000(e) states that to achieve compliance with paragraphs (a) through (d), administrative or engineering controls must first be determined and implemented whenever feasible, adding that whenever such controls are not feasible to achieve full compliance, protective equipment or any other protective measures shall be used to keep exposure of employees to air contaminants within the limits prescribed under 29 CFR §1910.1000(a) through (d). 29 CFR §1910.1000(e) states further that any equipment and/or technical measures used for the purpose of achieving compliance with 29 CFR §1910.1000(a) through (d) must be approved for each particular use by a competent industrial hygienist or other technically qualified person and, further, whenever respirators are used, their use shall comply with 29 CFR §1910.134

(respiratory protection standard). Therefore, under Federal regulations, the focus is on achieving an acceptable level of air contaminants within limits set forth at 29 CFR §1910.1000. Under those Federal regulations, where the employer is engaged in the dry cutting or grinding of masonry, he or she may achieve the air contaminant levels set forth at 29 CFR §1910.1000 through whatever engineering controls he or she selects so long as those controls result in compliance with the standard. In the alternative, where engineering controls are not sufficient to achieve the required levels, the Federal regulations require that respirators must be used in a manner consistent with the respiratory protection standard at 29 CFR §1910.134.

By contrast, proposed N.J.A.C. 12:122 would expressly prohibit the dry cutting or grinding of masonry except where it has been determined that the use of water in the cutting or grinding is not feasible. The proposed new rules would further require that in every instance where an employer is engaged in the dry cutting or grinding of masonry, regardless of the level of air contaminants, that employer must (1) use engineering and work practice controls to control the dust, such as a vacuum equipped with a HEPA filter, (2) ensure that any dry cutting is done in a designated area away from craftworkers, if possible, and (3) provide workers with full face respirators as part of a complete respiratory program, which shall include training, the proper selection of respiratory cartridges and fit-testing. The heightened standard set forth within proposed N.J.A.C. 12:122 and described above is expressly required by N.J.S.A. 34:5-182. In fact, as explained earlier within the Summary above, the wording of proposed N.J.A.C. 12:122-2.1 is taken verbatim from N.J.S.A. 34:5-182. Similarly, the provisions within proposed N.J.A.C. 12:122 pertaining to the right to enter, the right to inspect, orders to cease and penalties (N.J.A.C. 12:122-3.1, 3.2 and 4.1, respectively), are identical to the right to enter, right to inspect, orders to cease and penalty provisions within the Construction Safety Act, N.J.S.A. 34:5-166 et seq., of which N.J.S.A. 34:5-182 is a part. The Department does not have the discretion to deviate within its rules from these standards set forth by statute.

With regard to the relative costs and benefits of proposed N.J.A.C. 12:122, as indicated in the Economic Impact statement above, under the proposed new rules, all employers engaged in the cutting or grinding of masonry would be required to either incur the costs associated with obtaining equipment which uses water in the cutting or grinding or, where engaged in the dry cutting or grinding of masonry, employers would be required to incur the costs associated with the acquisition and installation of engineering and work practice controls, in addition to obtaining full face respirators for all affected workers and instituting a complete respiratory program, which includes training, the proper selection of respiratory cartridges and fit-testing. Moreover, employers who violate the provisions of N.J.A.C. 12:122 would be liable for a monetary penalty of up to \$500.00 for each violation, with each day of a continuing violation constituting an additional and distinct offense.

Regarding the benefits of proposed new N.J.A.C. 12:122, as indicated above within the Social Impact statement, the proposed new rules would provide affected employees with heightened protection against the effects of silicosis and other respiratory diseases which may result from the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws and the dry grinding of masonry materials.

#### Jobs Impact

The proposed new rules would not result in the generation or loss of jobs in the State.

#### Agriculture Industry Impact

The proposed new rules would not have an impact on the agriculture industry of the State.

#### Regulatory Flexibility Analysis

The proposed new rules would impose no reporting or recordkeeping requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. However, the proposed new rules would impose compliance requirements on such small businesses. Specifically, as indicated in the Summary above as well as in both the Social and Economic Impact statements, proposed N.J.A.C. 12:122 would expressly prohibit the dry cutting or grinding of masonry except

where it has been determined that the use of water in the cutting or grinding is not feasible. The proposed new rule would further require that in every instance where an employer is engaged in the dry cutting or grinding of masonry, regardless of the level of air contaminants, the employer must (1) use engineering and work practice controls to control the dust, such as a vacuum with a HEPA filter, (2) ensure that any dry cutting is done in a designated area away from craftworkers, if possible, and (3) provide workers with full face respirators as part of a complete respiratory program, which shall include training, the proper selection of respiratory cartridges and fit-testing. The economic impact of these requirements is addressed within the Economic Impact statement above and that analysis applies equally to both large and small businesses.

With regard to how the new rules are designed to minimize any adverse economic impact on small businesses, as indicated earlier, the standard set forth within proposed N.J.A.C. 12:122 regarding the cutting and grinding of masonry is expressly required by N.J.S.A. 34:5-182. In fact, as also explained within the Summary above, the wording of proposed N.J.A.C. 12:122-2.1 is taken verbatim from N.J.S.A. 34:5-182. Similarly, the provisions within proposed N.J.A.C. 12:122 pertaining to the right to enter, the right to inspect, orders to cease and penalties (N.J.A.C. 12:122-3.1, 3.2 and 4.1, respectively), are identical to the right to enter, right to inspect, orders to cease and penalty provisions within the Construction Safety Act, N.J.S.A. 34:5-166 et seq., of which N.J.S.A. 34:5-182 is a part. The Department does not have the discretion to deviate within its rules from these standards set forth by statute.

N.J.A.C. 12:122-4.2, which addresses an alleged violator's right to request a formal hearing prior to the imposition of a penalty under proposed N.J.A.C. 12:122-4.1, is not required by statute; however, the Department believes that providing such hearing rights is essential to safeguarding the regulated community's right to due process. The right to such hearings would apply equally to both large and small businesses.

#### Smart Growth Impact

The proposed new rules would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

### CHAPTER 122 CUTTING AND GRINDING OF MASONRY

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 12:122-1.1 Purpose

The purpose of this chapter is to protect the health and safety of employees against the effects of silicosis and other respiratory diseases which may result from the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws and the dry grinding of masonry materials.

##### 12:122-1.2 Scope

This chapter shall apply to employers and employees as those terms are defined within N.J.A.C. 12:122-1.3.

##### 12:122-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development or his or her designee.

"Complete respiratory program" means a "respiratory protection program" as that term is defined within 29 CFR §1910.134, incorporated herein by reference, as amended and supplemented.

"Compliance Officer" means the person authorized by the Commissioner of the New Jersey Department of Labor and Workforce Development to conduct safety inspections under this chapter.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Employee" or "worker" means any person suffered or permitted to work by an employer, having a specific regard to any activity related to the erection, construction, alteration, demolition, repair or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels,

sewers, underground buildings or structures, pipelines or ducts and all other construction projects or facilities.

"Employer" means any corporation, partnership, individual proprietorship, joint venture, firm, company or other similar legal entity engaged in any activity related to the erection, construction, alteration, demolition, repair or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, pipelines or ducts and all other construction projects or facilities.

"Establishment" means a single physical location where business is conducted or where services or operations are performed, such as a regional office, area office, installation or facility.

"Field site" means a physical location where an employer performs services or operations, but does not maintain an office or facility.

"First aid" means any one-time treatment and any follow-up visit for the purpose of observation of minor wounds, scratches, cuts, burns or splinters, which do not ordinarily require medical treatment. Such a one-time treatment and follow-up visit for the purpose of observation is considered first aid even though provided by a physician or registered professional personnel.

"Full face respirator" means a negative pressure respirator or a powered air-purifying respirator (PAPR) with a tight fitting full facepiece.

"High efficiency particulate air filter" means a filter that is at least 99.97 percent efficient in removing monodisperse particles of 0.3 micrometers in diameter. The equivalent National Institute for Occupational Safety and Health (NIOSH) 42 CFR §84 particulate filters are the N100, R100, and P100 filters.

"Inspection" means any on-site visit of an employer's establishment or field site to ensure that employers are in compliance with this chapter.

"Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional person.

"Negative pressure respirator" means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Other than serious" means a hazard, violation or condition which cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate impact on an employee's safety or health.

"Powered air-purifying respirator" (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Serious injury" or "serious physical harm" means any occupational injury or illness which requires treatment beyond first aid.

"Tight-fitting" means a respiratory inlet covering that forms a complete seal with the face.

#### SUBCHAPTER 2. EMPLOYER RESPONSIBILITIES

##### 12:122-2.1 Cutting and grinding of masonry

(a) Employers shall not engage in the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws or the dry grinding of masonry materials, unless the employer has first determined in a manner consistent with 29 U.S.C. §651 et seq. (the Federal Occupational Safety and Health Act of 1970), that the use of water in the cutting or grinding is not feasible.

(b) Where the employer has determined under (a) above that the use of water in the cutting or grinding is not feasible, the employer may engage in the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws or the dry grinding of masonry materials, only where the employer meets all of the following requirements:

1. The employer shall use engineering and work practice controls to control the dust, such as a vacuum with a high efficiency particulate air filter, or other dust control systems;
2. Any dry cutting which occurs shall be done in a designated area away from craftworkers, if possible; and



3. The employer shall provide workers with full face respirators as part of a complete respiratory program, which shall include training, the proper selection of respiratory cartridges and fit-testing in order to ensure that the workers are able to wear the respirators.

### SUBCHAPTER 3. INSPECTIONS AND ORDERS TO CEASE

#### 12:122-3.1 Right to enter and inspect

(a) The Compliance Officer shall enter without delay and at reasonable times any establishment or field site of any employer where work is performed by an employee if there is reason to believe that a violation of this chapter has occurred or is occurring and to conduct such investigations as the Compliance Officer shall deem to be necessary.

(b) Employers shall permit the Compliance Officer to inspect within the establishment or field site all pertinent conditions, structures, machines, apparatus, devices, equipment and materials.

(c) Employers shall permit the Compliance Officer to question privately any employee or managerial executive and review all records relating to the requirements in N.J.A.C. 12:122-2.1.

#### 12:122-3.2 Orders to cease

(a) If, upon inspection of an establishment or field site, the Commissioner discovers a condition which exists in violation of the provisions of this chapter, he or she shall be authorized to order such violation to cease.

(b) Orders to cease shall:

1. State with specificity the nature of the cited violation(s) of the provisions of this chapter; and

2. Provide a reasonable, specified time within which the required remedial action shall be taken by the person responsible, if applicable.

(c) If the Commissioner's order is not obeyed, the Commissioner may apply for an injunction in the Superior Court of New Jersey to compel compliance.

(d) Nothing in this chapter shall prevent the Commissioner from prosecuting any violation of the chapter, notwithstanding that the violation is corrected in accordance with the Order.

### SUBCHAPTER 4. PENALTIES AND HEARINGS

#### 12:122-4.1 Penalties

(a) Any violations of any of the provisions of this chapter shall be punishable by a monetary penalty of up to \$500.00.

(b) If a violation is of a continuing nature, each day during which the violation continues shall constitute an additional and distinct offense.

(c) Penalties imposed under this section may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(d) The Commissioner may compromise and settle any claim for penalties under this section in such amount as the Commissioner may deem appropriate and equitable under all of the circumstances, including, but not limited to:

1. The past record of compliance with the provisions of the chapter by the person cited;

2. The degree of cooperation afforded to the Commissioner's representatives by the person cited in securing compliance with the provisions of the chapter;

3. Whether the violation was willful in nature; and

4. Whether the violation resulted in injury or bodily harm.

#### 12:122-4.2 Hearings

(a) No penalty shall be levied pursuant to N.J.A.C. 12:122-4.1 unless the alleged violator is provided with:

1. Notification of the violation;

2. Notification of the amount of the penalty to be imposed; and

3. An opportunity to request a formal hearing.

(b) A request for a formal hearing shall be made in writing and received by the Commissioner within 21 calendar days following the employer's receipt of the notice of violation.

(c) All hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) If a hearing is not requested within the 21-day time limit set forth in (b) above, the notice of violation shall become a final order of the Commissioner.

(e) The alleged violator may request the initiation of a settlement conference at the time that the request for a formal hearing is made. If a settlement conference is requested, or the Department determines that a settlement conference would be useful, the settlement conference shall be scheduled and conducted by the Department within 30 days of the date upon which the Department receives the request for a formal hearing.

(f) If a settlement is not agreed upon, or no settlement conference is scheduled, a request for a formal hearing shall be transmitted to the Office of Administrative Law.

(g) Payment of the penalty shall be due when a final agency determination is issued or when a notification of violation becomes a final decision as the result of no appeal having been filed by the violator.

(h) All payments shall be made payable to the Department of Labor and Workforce Development in the form of a certified check or money order, or such other form as the Department deems suitable.